



STATE OF VERMONT
GENERAL ASSEMBLY
SPECIAL COMMITTEE ON IMPEACHMENT
INQUIRY

May 26, 2023

Dear Ms. Loomis and Mr. Donoghue,

On May 23, 2023, we received your email on behalf of the Vermont Press Association concerning the Special Committee on Impeachment Inquiry and the discussion of executive sessions under consideration in our proposed rules. We share the VPA's desire to inform the public and are committed to a process that is fair and as transparent as practicable as the committee investigates the matters assigned to us by HR.11. The Special Committee is not a typical legislative committee, given that its task is to investigate sensitive matters that could lead to the impeachment of elected officials.

The Special Committee must balance our shared desire for the public to be informed against the reality that certain witnesses and documents, which may be vital to the investigations, will not be available to the committee unless they can be kept confidential. The Draft Rules and Procedures for the Special Committee lay out a list of reasonable circumstances that would enable the committee to hear testimony or take evidence in executive session only by meeting the high bar of a two-thirds vote of the committee (5 of the 7 members) to authorize it in rule A(2):

Hearings of the Special Committee may be closed to the public and held in executive session if two-thirds of Committee members present and voting determine that confidentiality is required:

- a. to protect witnesses from potential retaliation;*
- b. because the matter is related to a witness's ongoing employment;*
- c. because the matter is related to another ongoing investigation;*
- d. to consult with the Special Committee's attorney or attorneys;*
- e. to prevent the disclosure of information that is confidential under law or is confidential under Section E; or*
- f. as otherwise necessary to enable the Special Committee to conduct its inquiries.*

This Special Committee, unlike legislative policy committees, is investigating matters of a sensitive nature. Other legislative committees with investigatory powers, such as the House Ethics Panel, Sexual Harassment Prevention Panel, and Discrimination Prevention Panel, have even more stringent confidentiality rules and procedures than are under consideration for the Special Committee on Impeachment Inquiry. These panels conduct investigations and hear testimony in nonpublic settings and rarely are the witnesses or the information gathered during those investigations made public. Also, unlike legislative policy committees, the Special Committee is tasked with deciding whether to make a formal charge in the form of Articles of Impeachment.

The VPA's email asserted that "The names of the specific witnesses are public record. They also are well known in Franklin County." This is impossible to know at this early stage of the Special Committee's work, when the Special Committee has just begun its investigation or contacted any potential witnesses. Our investigation is separate and distinct from any on-going criminal or professional regulatory investigations. It is not only possible, but highly likely that new witnesses with information relevant to either or both of the matters before the committee will volunteer information and testimony. The ability to protect these witnesses from retaliation or humiliation during the investigations is essential. Without being able to testify in executive session or submit confidential information, these witnesses may not be willing to come forward.

Other analogs to consider include the Board of Medical Practice investigation procedures ([26 V.S.A. § 1318](#)), which are similar to the Office of Professional Regulation's confidentiality provisions. [3 V.S.A. § 131](#). The Cannabis Control Board has substantially similar confidentiality provisions built into [H.270](#) as passed by the House and Senate.

Allowing victims or witnesses to testify in executive session would serve several important purposes, including the following:

Protecting vulnerable individuals: Testifying about traumatic events can be emotionally challenging, especially for victims or witnesses who have experienced abuse or other forms of harm. Allowing them to testify in executive session provides a protected environment where they may feel more comfortable sharing their experiences without fear of intimidation or retribution.

Promoting truthful testimony: Testifying in a public session with numerous spectators can be intimidating and affect a person's ability to provide an accurate and honest account of events. By testifying in executive session, witnesses and victims may feel less pressure, enabling them to express themselves more freely and provide clearer and more reliable testimony.

Minimizing trauma and distress: Testifying in public session can have significant psychological impacts on individuals involved in sensitive cases, especially when their personal experiences are recorded and available online subject to possible copying and rebroadcasting outside of their control. Allowing testimony in executive session can help reduce additional trauma, stress, or embarrassment that may arise from public exposure and scrutiny.

Encouraging participation and cooperation: Victims or witnesses may be reluctant to come forward due to concerns about privacy, safety, or retaliation. Allowing them to testify in executive session can help overcome these barriers by assuring them that their identities and testimonies will remain confidential. This can lead to increased participation, cooperation, and willingness to assist in the Special Committee's investigation.

Protecting sensitive information: The details of the Special Investigations may involve sensitive or confidential information that should not be disclosed publicly. By allowing testimony in executive session, we can ensure that only the Special Committee, investigators, and committee staff have access to this information while maintaining confidentiality.

We understand the historic importance of the consideration of these matters and will conduct our work in open session whenever possible. However, in order for the investigations to be thorough and to protect other on-going investigations and the interests of vulnerable witnesses, some of the Special Committee's work must be done in executive session.

The Final Report of the Special Committee on Impeachment Inquiry will be available to the public. Any evidence presented to the House, in the event that Articles of Impeachment are recommended by the Special Committee, would also be public, as well as the testimony and evidence in any trial in the Senate.

Sincerely,
Rep. Martin Lalonde, Chair
Rep. Mike McCarthy, Vice Chair